

Board/Committee:	Policy and Organisation Board
Date of Meeting:	4 October 2023
Title:	Government consultation on the Levelling-up and Regeneration Bill: Consultation on Implementation of Plan Making Reforms
Author:	Manager of Planning Policy
Status:	For Decision

Purpose

To brief Members regarding the content of the Government’s consultation document *‘Levelling-up and Regeneration Bill: Consultation on Implementation of Plan Making Reforms’* (25th July 2023)¹ and set out key matters to form the basis of the Council’s formal response to Government.

Recommendation

That this Board:

- Agrees the responses to the Government’s consultation questions as set out in Appendix 1 of this report.

1 Background

- 1.1 The Government’s latest consultation on its proposed changes to the plan-making system was published on 25th July 2023 as part of the Levelling –Up and Regeneration Bill and follows earlier consultation published on 22nd December 2022 (and reported in a Members Information Bulletin in April 2023). Members may recall that the Government have been proposing major changes to the planning system since the publication of the *‘Changes to the Current Planning System’* consultation and *‘Planning for the Future’* White Paper in August 2020 which was reported to the Economic Development Board (23/9/2020).
- 1.2 This latest consultation focuses specifically on reforms to the Local Plan system and related planning policy documents. Comments are required to reach the Government by 18th October 2023.
- 1.3 The proposed response to the latest Government’s consultation questions are set out in Appendix 1 to this report. This report focuses on the main reforms and matters where there are particular implications for Gosport

¹ www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation/levelling-up-and-regeneration-bill-consultation-on-implementation-of-plan-making-reforms

Borough and the operation of the Council's Planning and Regeneration service.

2 Key changes to the Local Plan system

2.1 Each of the Government's main proposed changes are summarised separately below followed by an officer comment.

Content of the new style Local Plans

2.2 The Government would like a more straightforward Local Plan system that is easier for users to engage with. It is therefore proposing the following changes:

- Local Plans will follow a national template to make them simpler, shorter and more visual;
- They will focus on a local planning vision and strategy, strategic policies, the allocation of development sites and the protection of various designated sites.
- They will not include most development management policies nor repeat national policy, instead the Government will produce a suite of national development management policies which will be subject to separate consultation.
- There will still be opportunity for local development management policies to complement national policies but there should be clear justification for this and they should not conflict with national policy.

2.3 The Government acknowledges that current local plans are lengthy and word heavy. The new style Local Plans will include policies relating to the amount, type and location of, and timetable for, development. It will include policies relating to particular characteristics and circumstances of the area as well as infrastructure and affordable housing requirements. This will be accompanied with a policies map which is kept up to date.

2.4 **Officer comment:** A simplified Local Plan system is welcomed in principle but there is concern that over-simplification of the Local Plan document could make it harder for the community, developers, planning officers and Members to understand some of the detailed requirements of a particular planning issue. It would be useful for the Government to produce some prototype specimen documents before enacting the system so that practitioners can see what is actually meant by the simpler system.

2.5 In terms of the national development management policies (NDMPs) these would be designated by the Secretary of State following full public consultation although there does not appear to be an examination/scrutiny process. The Council previously made comments relating to our concerns regarding the scrutiny of NDMPs, however the Government is not consulting on NDMPs as part of this particular consultation.

2.6 It is however consulting on the provision for local development management

policies to be included in Local Plans and states that these need to relate to the use or development of land and be designated to achieve objectives that relate to the planning authority's area. They require justification and will be scoped by Local Planning Authorities (LPAs) and the new gateway assessments in liaison with the Planning Inspectorate.

- 2.7 The Council agrees with local development management policies and have strongly made the case for them through previous consultations. The Council cited examples of policies such as the need to protect important employment assets including deep water access which would not necessarily be included in NDMPs.
- 2.8 Local development management policies are needed to provide local flavour and reflect local circumstances. However it is not clear how they will be expected to work with the proposed NDMPs.
- 2.9 The Government's proposals however risk creating significant inequality in the amount of scrutiny given to various elements of the policies that will be used to determine planning applications.
- 2.10 On one hand local plan policies to be used by the Council to determine planning applications, which have been approved by locally elected councillors, will be subject to significant local engagement with at least two stages of public consultation and be subject to scrutiny as part of the Examination in Public. The policies therefore will have been subjected to a significant level of scrutiny by an Inspector even though the implications of these policies are local.
- 2.11 On the other hand it is not clear whether NDMPs will have been through the same level of scrutiny, particularly as their impact will be on a national scale. For example will such policies be subject to the same degree of local engagement? Will the policies be subject to an Examination in Public? The level of scrutiny should be equitable. A national policy will result in different implications across the country and therefore each part of the country should be able to make representations through an examination process to ensure the policy is suitably worded or caveated for its own circumstances.
- 2.12 Given the approach the Government has taken to changes to the permitted development regime there is little confidence that the NDMPs will genuinely take into account the concerns of Councils and their communities. The blanket permitted development change from commercial, business and service uses (Class E use) to residential is one case in point. Whilst it is recognised that certain parts of the high street could be repurposed to residential development at ground floor the permitted development scheme makes this difficult for local authorities to control. This matter should be determined by LPAs in consultation with their communities to decide through the local plan process rather than a radical change being made to the permitted development system. A similar case can be made regarding the permitted development rights given to convert offices to residential development which has led to numerous inappropriate developments across

the country where families are living in poor housing conditions within industrial estates. Without proper scrutiny there are significant concerns that the NDMPs will undermine local decision-making, harm community engagement and lead to poor quality developments.

Speeding up the process

- 2.13 The Government proposes that Local Plans will be prepared within 30 months once each LPA has defined the scope of the new plan. It will then produce a Project Initiation Document which will include public consultation arrangements.
- 2.14 There will be three new 'gateway' assessments in which the Planning Inspectorate will formally liaise with the LPA to ensure that the Local Plan is proceeding on the right lines. This will take place at the following stages:
- Gateway 1 – within four months of the start of the plan-making process to ensure that LPAs have scoped the relevant issues and are considering appropriate options,
 - Gateway 2 – an advisory meeting on progress including strategy development, evidence studies and other issues encountered.
 - Gateway 3 – this occurs at approximately 26/27 months into the process to establish whether the LPA has an appropriate plan that can move forward to Examination including whether sufficient evidence has been produced, options considered and consultation undertaken.
- 2.15 **Officer comment:** It is considered a 30 month timetable should not be set out in policy at this stage. There is no evidence this is achievable. The consultation at paragraph 38 states DLUHCs evidence shows that it takes 7 years, on average, to produce a Local Plan. It is not clear from the consultation document whether work been undertaken to understand why it takes 7 years and whether the proposed reforms really tackle the causes for delay.
- 2.16 If the Government is confident that the system is achievable in 30 months, then it should play out in this way in practice. In reality, there are a multitude of issues beyond the remit of this consultation which impact local plan timetables and the Government should remain open to change on the 30 month timetable as the new system is rolled out.
- 2.17 It would appear from the Government's consultation questions that the 30-month timescale for the new style plans is a given and not subject to consultation. The timeline as proposed is considered wholly unrealistic particularly taking into account the Government's proposals to expand public consultation and other planning commitments being introduced such as design coding and the need for other forms of planning documents (such as supplementary plans) to be scrutinised through a formal examination. This will create additional burdens on planning departments which as acknowledged publicly by the Government and the development sector are facing existing challenges in their resources and skills.

- 2.18 Whilst it is acknowledged that the requirement for evidence is reduced there is significant uncertainty regarding what the evidence requirements will be and what level of scrutiny local plans will be subject to during examination. It is this Council's experience that anything that is subject to public examination requires significant evidence in order to demonstrate that a plan is sound in the light of objections made by various interest groups and the development sector. Much clearer guidance is required on this matter to demonstrate that plan preparation can be achieved in 30 months particularly as it is the evidence gathering which takes the significant amount of time and resources.
- 2.19 The Government will need to consider whether the Examination process will be less onerous in order to take account for the need for less evidence and consider whether more elements of the examination can be concluded through written representations. Additionally, further detail on the consultation arrangements for local plans will be necessary as this is an important part of the plan-making process which takes considerable time and resources to undertake in a meaningful way.
- 2.20 Planning departments will need to be adequately resourced and trained if such a timetable was introduced.
- 2.21 The Council is supportive of the Gateway meetings with the Planning Inspectorate however the Council considers that the Government should fund the three Gateway meetings for the first round of the new plan-making system as part of the new burden requirements of the newly introduced system.

Examinations

- 2.22 Examinations will be more efficient and should take no more than 6 months. There will be a requirement for Council's to start updating their plans every five years.
- 2.23 **Officer comment:** It is disappointing that the Government in Paragraph 117 makes the assumption without any evidence or justification that Examinations 'in its form, broadly continues to provide a good basis for testing local plans and for interested parties to have their say.' Yet it goes on to say that examinations can take too long. The Council considers that as part of the overall reforms of the planning system that there is an opportunity to review the examination process itself. The extent of the scrutiny may have become part of the problem. The tests of soundness at Examination has led to the disproportionate amount of evidence being produced with significant time and cost implications.
- 2.24 A full review needs to be made of the examination system and how it can have a lighter touch but yet still provide sufficient scrutiny with appropriate engagement for all those who wish to have the right to be heard. This could involve amending the need to meet the current tests of soundness with a

new system that can allow Local Plans to be adopted even if there are identified weaknesses which in many cases are outside the control of the local authority to be able to resolve.

- 2.25 In relation to the proposals outlined in the document itself the Council generally agrees with proposals to speed up plan examinations. Care should be taken when trying to achieve these proposals given the Government's commitment that communities must remain at the heart of the plan-making process, and that local people must have a meaningful say on planning policies that affect them and their local areas. Examinations play a key role in conflict resolution and providing members of the public with an opportunity to have their say. Greater community involvement at an early stage of the plan-making process needs to be carried through to its conclusion and people should be given a proportionate amount of time at the examination.

Reduced burden of evidence-gathering

- 2.26 The Government acknowledges that evidence produced to support a local plan takes a significant amount of time and resource to produce and can often feel disproportionate. The Government states that a strong evidence base will still be expected to inform and support plans.
- 2.27 In order to produce plans quickly and more simply the current heavy demands of evidence gathering will be reduced. Provisions include:
- The new process will be supported by clearer, more streamlined and proportionate evidence expectations to reduce the burden on planning authorities. This will be set out in a revised NPPF.
 - Increased standardisation of key evidence and data.
 - Freezing data or evidence at particular point of plan making.
 - Support on evidence provided through gateway assessment.
 - Reforms to Strategic Environmental Assessments which includes sustainability appraisals. It is aimed that these will be more effective and accessible and be clearer in how adverse impacts are avoided or mitigated.
- 2.28 The Government proposes to change the NPPF to remove the 'justified' test of soundness when examining plans which it hopes will lead to a more proportionate approach to evidence gathering. The Government is currently not proposing changes to the three other tests for a Local Plan which are being 'positively prepared, effective, and consistent with national policy', however the consultation proposes that further work will be undertaken to explore whether a change to the 'effective' test would also be beneficial.
- 2.29 **Officer comments:** Uncertainty about evidence requirements is certainly a cause for excess expenditure and delay, however this situation is preferable to having a plan fail at examination. Clarity on what exact evidence is required, and standardisation of that evidence, would therefore be beneficial.

- 2.30 Whilst it is recognised that the level of evidence required for plan making has become very onerous requiring significant resources it is important to ensure that local plans remain evidence-based. Therefore it will be necessary for there to be very clear guidance in the forthcoming NPPF and accompanying PPG on what level of evidence is required to ensure a more proportionate approach to examination. There is concern that there will still to be a considerable amount of evidence in order to address representations received as part of the Examination and the scrutiny from the Inspector.
- 2.31 Local Plans are required to meet a significant level of scrutiny through all the tests of soundness which impels local authorities to produce significant amount of evidence to ensure matters can be covered at Examination. Inspectors can introduce matters at the Examination which have not even been subject to representations in order to demonstrate that a particular test of soundness is met and consequently local authorities will produce detailed evidence on all matters which may not be considered proportionate. Hence the need for the Government to review all the tests of soundness and the examination process. Removing the 'justified' test alone would not necessarily reduce the evidence burden and therefore it will become very difficult to achieve the Government's proposed 30-month deadline for the new style Local Plans.
- 2.32 As recognised in paragraph 91, there are various views in the planning sector about the 'effective' element of the tests of soundness and the Government will undertake further work on whether to change this test. If the Government is to achieve local plans which are ambitious and foster well-designed places, the Council considers that it is imperative that the 'effective' element of the test must at least be reviewed to make it clear that it is not always possible to demonstrate deliverability over the plan period at the time of producing a plan. Complex brownfield regeneration takes years to realise and is too often being stifled by a system which focusses on demonstrating deliverability at the time of examination.
- 2.33 Care should be taken in some areas of standardisation, and consequently flexibility should be built into methodologies. There is a need to consider whether certain evidence is still required. For example, Whole Plan Viability Reports should be scrapped as it has been demonstrated that these are not fit for purposes as they follow a generic methodology at a particular point in the economic cycle yet dictate the potential for developer contributions over the whole plan period. Due to their generic nature they do not sufficiently take into account different motivations of landowners and developers, nor funding arrangements and other variables that affect the development sector. A site specific viability assessment with a third party scrutiny is a much more accurate assessment of on-site viability at the point of the planning application and can be factored in by developers as part of the process. Most of this information should be to hand as part of the business case for the particular development. The generic whole plan viability reports can lead to LPAs having to adopt policies which minimise developer contributions (either through CIL or Section 106) for much needed infrastructure and reduce rates for affordable housing.

Increased use of digital technology

- 2.34 In order to speed up the process, make plans simpler and easier to engage with and improve consultation it is proposed that plans are digitally transformed. This could mean that plans are presented as interactive maps rather than static documents with the inclusion of standardised planning and environmental data openly available.
- 2.35 **Officer comment:** The Council already has an interactive Policies Map however it is proposed to create a slicker experience whereby the whole plan is available in a more useable digital format. Consequently the Government's plans for digital efficiencies are welcomed however there needs to be appropriate opportunities for feedback from planning officers, Members, the community and the development sector on whether the templates are appropriate and that such formats can be reviewed.
- 2.36 Local authorities will need to receive sufficient new burdens funding from Government to enable the further transformation towards digital formats and to enable the relevant training to be undertaken.
- 2.37 It will be necessary to ensure those sections of the community that either do not wish to use digital forms or indeed are unable to use digital technology can be fully catered for under the new system.

Supplementary Plans

- 2.38 The Levelling Up and Regeneration Bill provides for the creation of new Supplementary Plans (SPs). These will be subject to the examination process, albeit written representations only. They should generally be prepared in exceptional circumstances such as an unexpected regeneration opportunity or for introducing new site-specific policies in relation to design, infrastructure or affordable housing. They can also be used for design coding.
- 2.39 The existing Supplementary Planning Document (SPD) system which are only guidance and are not subject to examination will no longer be produced and existing SPDs will only remain in force until the LPA adopts a new style Local Plan. Consequently all the relevant SPD guidance needs to be either subsumed into the new Local Plan or 'revised and remain as guidance'.
- 2.40 **Officer comment:** The latest consultation document provides useful detail, previously unavailable regarding the potential types of documents that could be included as SPs and consequently it is considered that design codes and masterplans would be useful to be included as SPs and be given substantial weight following adoption after an examination.
- 2.41 However the Council wishes to maintain its strong objection on the need to force local authorities to abandon their current suite of SPDs. As stated in Paragraph 205 the Government acknowledges '*that authorities have*

invested considerable time and effort in creating SPDs and their content is locally beneficial.'

- 2.42 The proposal to delete the Council's existing SPDs is opposed as these have in many cases been subject to significant community engagement and have gone through a due process. They have largely been supported by communities and the development industry who welcome the additional guidance to complement the Council's Local Plan policies. SPDs should therefore be retained until such time as the Local Planning Authority wishes to delete or review. It should be for the Council to decide when and if such documents are withdrawn on the basis of whether they are still relevant or not.
- 2.43 There is very much a case to retain the SPD system as planning guidance as it has been demonstrated that they often secure much more community interest than the Local Plan itself and can provide useful guidance to complement a Local Plan (and potentially the proposed National Development Management Policies). This would remain a simple, cost effective way of engaging with the community and adopting relevant local guidance.
- 2.44 Notwithstanding the above the consultation document introduces some ambiguity as paragraph 205 and figure 6 states that SPD content can be fully or partially absorbed into a local plan or become full or partial guidance. It is not clear whether this full or partial guidance is a SP or another form of planning guidance. If the latter is the case it is questioned why a new layer of retained guidance is required.
- 2.45 The cost and resources incurred by an examination for SPs will potentially be a disincentive to produce helpful guidance.
- 2.46 The Government should maintain provision for SPDs and include the flexibility if Councils wish to prepare a SP through the examination process.

Community Land Auctions

- 2.47 The Government is proposing to introduce Community Land Auctions as a pilot project for a 'small number of planning authorities' to participate in a pilot in which landowners 'bid' to have their land selected for allocation in an emerging local plan by stating the price at which they would be willing sell their land for development. The offer from the landowner, once an option agreement is in place with the piloting local authority becomes a legally binding option. Once the piloting authority has acquired options over land, put forward in the site identification phase, they will then decide which land to allocate in their emerging local plan considering a range of factors that will be set out by the Government.
- 2.48 Unlike the conventional local plan-making process, the Bill sets out that when CLA-piloting authorities are making decisions surrounding site allocation, they will also be able to consider the financial benefits that they

are likely to accrue from each site. Financial benefits include the benefits that a piloting authority will or could derive from a CLA option, allowing option prices to be taken into account as part of the land allocation process for a local plan. How, and the extent to which, financial benefits may be taken into account, including how they are to be weighed against other factors, will be set out in CLA regulations. The existing requirement to prepare local plans with the objective of contributing to the achievement of sustainable development as per Section 39 of the Planning and Compulsory Purchase Act 2004, will remain.

- 2.49 **Officer comment:** This will be a limited pilot study and appears fraught with risk particularly for a Borough with considerable viability considerations. It would appear that this will be an interesting project whereby later authorities can learn best practice from those chosen for the pilot project.

Approach to roll out and transition

- 2.50 The Government has confirmed that the latest date for plan-makers to submit Local Plans for examination under the current system will be 30 June 2025 and that plans will need to be adopted by 31 December 2026.
- 2.51 **Officer comment:** It is proposed that the Council’s emerging Local Plan 2038 will be submitted to the Government in 2024 and will be adopted by the end of 2025 at the latest. Therefore it is proposed to continue with the Local Plan 2038 under the current system and learn from others when the Council is required to produce a new style Local Plan post 2025/26.

3 Next steps

- 3.1 Appendix 1 includes the detailed responses to the consultation questions which are required to reach the Government by 18th October 2023. The Government states that it will consider the representations received.
- 3.2 Officers will inform Members either through P&O Board or a Members Information Bulletin (whichever is the most appropriate) regarding the outcomes of this consultation exercise.

4 Risk Assessment

- 4.1 It is important that the Council makes a representation to the Government on the planning reforms as its proposals have far-reaching consequences for the Planning and Regeneration Service and how the Council undertakes its role as Local Planning Authority for Gosport Borough.

Financial Services comments:	None
Legal Services comments:	None
Equality and	NA – this is an external consultation and will be

Diversity:	subject to the Government's own internal processes.
Climate Change:	This is an external consultation and will be subject to the Government's own internal processes.
Crime and Disorder:	This is an external consultation and will be subject to the Government's own internal processes.
Council Plan:	The proposals have the potential to change the way in which Planning and Regeneration services are operated.
Risk Assessment:	See Section 4
Background papers:	1) Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation/levelling-up-and-regeneration-bill-consultation-on-implementation-of-plan-making-reforms
Appendices	Appendix 1: Proposed GBC response to Government consultation on Levelling-up and Regeneration Bill: consultation on implementation of plan making reforms
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